

23.0.0 SPOUSAL IMPOVERISHMENT

23.1.0 Description

Spousal impoverishment is an MA policy that allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies to institutionalized persons (23.2.3) and their community spouse (23.2.1).

The policy's purpose is to prevent impoverishment of the community spouse. Before enactment of the Medicare Catastrophic Coverage Act of 1988, the community spouse was legally obliged to provide financial support to the institutionalized person. After enactment, s/he is allowed to have substantial assets and income without liability for the institutionalized spouse and without affecting the MA eligibility of the institutionalized spouse.

23.2.0 Useful Terms

23.2.1 Community Spouse

A "community spouse" is:

1. Married to an institutionalized person and
2. Not living in a nursing home or other medical institution for 30 or more consecutive days.

As long as the community spouse is not an institutionalized person, his/her living arrangement can have no effect on his/her asset share (23.2.2) or income allocation (23.6.0).

Example. Joe is an institutionalized person living in a nursing home. His wife, Carla, is in prison. Carla is entitled to the community spouse asset share and to any allowable income which Joe chooses to allocate to her.

23.2.2 Community Spouse Asset Share

The community spouse asset share (CSAS) is the amount of countable assets above \$2,000 that the community spouse, the institutionalized person, or both, can possess at the time the institutionalized person **applies for MA**. Once the institutionalized spouse is determined eligible, the assets of the community spouse are unavailable.

23.2.3 Institutionalized

"Institutionalized person" means someone who:

1. Participates in Community Waivers, or
2. Has resided in a medical institution for 30 or more consecutive days, or

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23.2.3 Institutionalized Person (cont.)

3. Is likely to reside in a medical institution for 30 or more consecutive days, as attested to by the medical institution.

An exception to the 30 day period is that a resident of an IMD (10.1.1) is considered an institutionalized person until s/he is discharged. The 30 day period includes situations in which the person resides in more than 1 medical institution during 30 or more consecutive days.

If a person relocates from one institutional living arrangement to another, consider him/her to be in a continuous period of institutionalization, provided s/he does not live in a non-institutional living arrangement between the two periods of institutional living.

Example. Mr. Wunder's niece moved him from his community waiver placement in Bayfield County to an SNF nursing home in Eau Claire County. This is a continuous period of institutionalization. If he had gone to live with his niece for a while, and then gone to the Eau Claire nursing home, his arrival at the Eau Claire nursing home would have been considered a new period of institutionalization.

23.3.0 Requirements

All institutionalized persons applying for MA must meet the same nonfinancial requirements. Spousal impoverishment policy introduces no changes in MA nonfinancial tests.

On the financial side:

1. **Assets.** The assets of both the institutionalized person and his/her spouse are counted in the asset test.
2. **Income.** The income limit is the same as that for non-spousal impoverishment institutionalized persons. But, after the institutionalized person becomes eligible, s/he is allowed to allocate some of his/her income back to his/her community spouse and family.

23.4.0 Assets

Count the combined assets of the institutionalized person and his/her community spouse. (**Note:** Disregard prenuptial agreements. They have no effect on spousal impoverishment determinations.) Add together all countable, available (11.2.0) assets the couple owns. See the Assets Unit.

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23.4.0 Assets (cont.)

Do not count the following assets:

1. Homestead property. If the institutionalized person and the community spouse each owns home property and meets the criteria in 11.8.1.3, exempt the institutionalized person's home, but not the community spouse's home.

Example. One spouse is in a nursing home, the other lives in the community. They have lived apart for 10 years. The institutionalized person owns a home and intends to return. The community spouse owns a different home. The home that each spouse owns is the principal residence of that spouse. The institutionalized person's home is an exempt asset. The community spouse's home is not exempt.

If they both own homes and the institutionalized person's home is not exempt, count the institutionalized person's home, but exempt the spouse's home. Both homes cannot be exempt simultaneously.

2. One vehicle, regardless of value or purpose. If the AG has more than one vehicle, disregard one vehicle totally, regardless of value or purpose. Then, for the remaining vehicles, follow the EBD rules for vehicles (11.7.9).
3. Any/all assets designated for burial purposes are exempt. The amount should be supported by documentation of the burial related costs or contract. For example, ask the client to document that they have arranged to purchase a \$100,000 casket or that a funeral home will provide them with a \$75,000 funeral along with an itemized listing of the funeral goods and services that will be provided.

Do not allow applicants and recipients to simply state that they are setting aside an unreasonable amount of cash (e.g., \$1,000,000) as their burial fund for unspecified funeral expenses. If they can document the funeral expense that they expect to incur, it can be totally exempt regardless of its cost.

This differs from EBD burial policies for non-institutionalized persons and institutionalized persons without a community spouse (11.5.0).

4. Household goods and personal items, regardless of their value.

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23.4.0 Assets (cont.)

5. All assets not counted in determining EBD MA eligibility.
6. IRA's of an ineligible community spouse (See 11.7.21).

23.4.1 Asset Assessment

The ESA must make an assessment of the total countable assets of the couple at the:

1. Beginning of the person's first continuous period of institutionalization of 30 days or more, **or**
2. Date of the first request for community waivers, whichever is earlier.

Complete an asset assessment when someone applies, even if s/he had one done in the past, to get the most current asset share.

If the client was not married on the first date of institutionalization or waivers request, apply the policy from the point s/he is married.

You must also do an asset assessment at any other time the institutionalized person or his/her spouse requests it.

Tell the person for whom you are making the assessment what documentation is required. S/he must document ownership interest in and the value of any available assets the couple had at the time of his/her first period of continuous institutionalization. Use the same documentation procedures used when an application is filed (37.0.0).

23.4.2 Calculate the CSAS

The community spouse asset share (CSAS) is the amount of countable assets greater than \$2,000 that the community spouse, the institutionalized person, or both, can possess at the time the institutionalized person **applies for MA**.

<i>IF</i> the total countable assets of the couple are:	<i>THEN</i> the CSAS is:
\$185,520, or more	\$92,760
Less than \$185,520, but greater than \$100,000	½ of the total countable assets of the couple
\$100,000 or less	\$50,000

CARES will send each member of the couple a letter that states the couple's total countable assets, the CSAS, how

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23.4.2 Calculate the CSAS (cont.)

much the institutionalized spouse must transfer to the community spouse, the date by which the transfer must be made, and the institutionalized person's asset limit.

23.4.3 Asset Test

When the institutionalized person applies for MA, compare the total countable assets of the couple to \$2,000 plus the greater of:

1. CSAS, **or**
2. An amount ordered by a court, or fair hearing.

If assets at the time of application are equal to or less than this amount, the institutionalized person is eligible. If they are more, s/he is not eligible.

23.4.4 Undue Hardship

The institutionalized person will not be denied MA if the ESA determines that the ineligibility caused by excess assets creates undue hardship for him/her. Undue hardship means an immediate, serious impairment to the institutionalized person's health.

23.4.5 Asset Transfer

After the institutionalized person is found eligible, s/he may transfer assets to the community spouse. The maximum amount s/he can transfer is the CSAS (or a greater amount ordered by a court or a fair hearing). If the community spouse already has some assets, the institutionalized person can transfer assets which when added to the community spouse's assets equal the CSAS (or an amount ordered by a court or a fair hearing).

S/he isn't allowed to transfer assets for less than fair market value to anyone other than the community spouse.

S/he must transfer the assets by the next regularly scheduled review. If his/her assets are above \$2,000 on the date of the next scheduled review, s/he will be determined ineligible.

Example: Phil is a community waivers participant. He inherits \$100,000. He will remain asset eligible as long as he transfers it to his wife. She can do anything she wants with the money except give it away. See 14.4.0.

If s/he leaves the institution for 30 days or more and then becomes institutionalized again as an applicant or recipient, the time allowed to transfer the assets does not start over.

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23.4.5 Asset Transfer (cont.)

S/he is held to the requirement to transfer assets within 1 year of the date of s/he was first determined eligible for institutional MA.

There is no recovery by MA for MA services already provided if, at the time of the next scheduled review, the institutionalized person is found ineligible because of assets s/he should have transferred.

23.5.0 Income

The income limit is the same as for institutionalized persons who don't have a community spouse. See the Institutions Unit.

23.5.1 Nontrust Income

Count non-trust income as belonging to the person who receives the payment.

If the payment is received in both spouses' names, count half for each.

If the payment doesn't specify the payee, count half for each spouse.

If the payment is shared with others, count amounts equal to each spouse's proportionate share.

Count as income to the institutionalized spouse any income that the community spouse actually makes available to him/her, whether voluntarily or under a court order.

23.5.2 Trust Income

Follow the specific terms of the trust as to which spouse is the payee and what percentage of the income belongs to him/her. If the percentage is unspecified, consider half the payment to belong to each spouse. If any trust income goes to dependent family members, attribute it to whom it is assigned; if it isn't assigned to a specific family member, divide it equally those who receive it.

23.6.0 Income Allocation

After the institutionalized person is found eligible, s/he may allocate some of his/her income to the community spouse and dependent family members living with the community spouse.

Dependent family members include:

1. Dependent minor children (natural, adopted, step) of either parent who live with the community spouse.

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23.6.0 Income Allocation (cont.)

2. Children (natural, adopted, step), 18 years of age or older, of either parent, who are claimed as dependents for tax purposes under the Service Code Internal Revenue (IRSC) and who live with the community spouse.
3. Siblings of either the institutionalized person or the community spouse who are claimed as dependents and who live with the community spouse.
4. Parents of either the institutionalized person or the community spouse who are claimed as dependents and who live with the community spouse.

The institutionalized person must decide how much income to allocate. S/he may allocate an amount that brings the community spouse's and family members' income up to the maximum allocation, or s/he may choose to allocate a lesser amount.

Since s/he may have medical costs that aren't covered by MA, s/he may wish to keep some income and not allocate it all.

Example. Caroline has monthly income of \$400. She transfers \$310 to her community spouse, keeping only her personal needs allowance (30.5.1) and \$45 to pay as her monthly patient liability. She incurs \$80 in non-covered medical expenses each month. Those expenses will be charged first to her patient liability. But she must pay the remaining \$35.00 out of her personal needs allowance. If the personal needs allowance does not cover her expenses, the provider will try to obtain the balance from the community spouse.

Use the Spousal Impoverishment Income Allocation Worksheet (WKST 07) to determine how much of the institutionalized spouse's income:

1. May be allocated to his/her spouse (Section A).
2. Will be deducted, regardless of whether or not s/he actually allocated it to other dependent family members (Section B).
3. Will be paid toward his/her cost of care (Section C).

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23.6.0 Income Allocation (cont.)

On the Spousal Impoverishment Income Allocation Worksheet (WKST 07), do the following:

Section A -- Community Spouse Income Allocation

1. Enter on Line 1 the community spouse maximum income allocation. Unless a larger amount is ordered by a fair hearing or court, the maximum allocation is the **lesser** of:
 - a. \$2,266.50, **or**
 - b. \$2,020.00 plus excess shelter allowance.

“Excess shelter allowance” means shelter expenses above \$606.00. Subtract \$606.00 from the community spouse’s shelter costs. If there is a remainder, add the remainder to \$2,020.00.

Community Waivers. Follow these rules to determine when to add the excess shelter cost to the community spouse income allocation:

- 1) If the waiver person's community spouse lives with him/her, do not add the excess shelter cost to the income allocation.
- 2) If the waiver person's community spouse does not live with him/her, add the excess shelter cost to the income allocation.

Community spouse shelter costs include the community spouse’s expenses for:

- Rent.
- Mortgage principal and interest.
- Taxes and insurance for principal place of residence. This includes renters insurance.
- Any required maintenance fee if the community spouse lives in a condominium or cooperative.
- The standard utility allowance established under the Food Stamp program:

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23.6.0 Income Allocation (cont.)

If Community Spouse pays:	Add
Heat and utilities	\$241
Utilities only	\$133
Telephone only	\$23
If the community spouse lives in a condominium or cooperative where the maintenance fee includes utility expenses, reduce the standard utility allowance by the amount of utility expenses included in the maintenance fee.	

A court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his/her necessary and basic maintenance needs with the amount allocated.

If a court or a fair hearing decision orders a larger Community Spouse Income Allocation, enter the court or fair hearing ordered amount on Line 1.

2. Enter on Line 2 the community spouse's monthly gross income. Use the EBD income rules, but **do not give earned income, unearned income, and work related deductions.**
3. Do the math from Line 1 through Line 3. The result on Line 3 is the maximum amount of income the institutionalized spouse may allocate to his/her community spouse.

If the institutionalized spouse does not allocate the maximum amount, the amount s/he retains counts as income in determining the amount contributed to the patient liability.

Section B -- Family Member Income Allowance

1. Enter \$505.00 on Line 1 under the name of each dependent family member who lives with the community spouse.

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23.6.0 Income Allocation (cont.)

2. Enter the gross monthly income of each dependent family member under his/her name. Use the EBD income rules, but **do not give earned income, unearned income, and work related deductions.**
3. Do the math from Line 1 through Line 3.
4. Add the Line 3 amounts together and enter the total on Line 4. Deduct the amount on Line 4 from the institutionalized spouse's income.

Section C -- Cost of Care

1. Enter the institutionalized person's gross monthly income on Line 1. Use the EBD income rules, but **do not give earned income, unearned income, and work related deductions.**
2. Enter his/her personal allowance on Line 2:
 - a. Personal Needs Allowance (30.5.1) for a person in a medical institution, **or**
 - b. Personal Maintenance Allowance for a person in community waivers. This is the Community Waivers Basic Needs Allowance (30.5.1) plus other applicable deductions (25.9.2.1) up to the EBD Maximum Personal Maintenance Allowance amount (30.5.1).
3. Enter on Line 4 the income allocation amount (Section A, Line 3) that is actually allocated to the community spouse.
4. Enter on Line 6 the dependent family member allowance from Section B, Line 4.
5. Enter on Line 8 any court-ordered guardian or attorney fees (10.6.5).
6. **Community waivers only.** Enter on Line 10 the community waiver person's medical/remedial expenses and the cost of his/her health insurance premiums.

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23.6.0 Income Allocation (cont.)

Nursing home cases only. Enter on Line 10 the cost of the nursing home person's health insurance premiums.

7. Do the math from Line 1 through Line 11. The result on Line 11 is the amount the institutionalized spouse must pay toward cost of care.

Example. Harry, a MA recipient, resides in a nursing home. He has unearned income of \$3,600 a month. His wife, Edith, gets \$200 a month from Social Security. Her sisters, Mabel and Maxine, whom she claims as dependents on her IRS tax forms, live with her. Mabel has no income. Maxine receives \$20 a month from her son.

Community Spouse Income Allocation

Harry's community spouse, Edith, has shelter costs of \$756.00 a month. Her excess shelter costs are \$756.00 minus \$606.00 = \$150.00. \$150.00 plus \$2,102.00 = \$2,170.00. \$2,170.00 is less than \$2,266.50, so the maximum allocation amount to Harry's spouse is \$2,170.00.

\$ 2170.00 (maximum income allocation)
-200.00 (Edith's monthly income)
 \$ 1970.00 (spousal income allocation)

Family Member Income Allowance

\$ 505.00 (maximum income allowance)
-0.00 (Mabel's income)
 \$ 505.00 (Mabel's income allowance)

\$ 505.00 (maximum income allowance)
-20.00 (Maxine's income)
 \$ 485.00 (Maxine's income allowance)

\$ 505.00 (Mabel's income allowance)
+485.00 (Maxine's income allowance)
 \$ 990.00 (total family member income allowance)

Payment Toward Cost of Care

\$ 3600.00 (Harry's income)
-45.00 (personal needs allowance)
-1970.00 (spousal income allocation)
-990.00 (family member income allowance)
 \$ 595.00 (nursing home liability amount)

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23.7.0 Effective Date

This income allocation policy applies to persons who:

1. Were institutionalized persons (23.2.2) on or after September 30, 1989. Disregard the length of time they were already institutionalized.

Example. John had been continuously institutionalized for 23 years on September 30, 1989. Apply the income allocation policy to John.

Example. Mildred has been continuously institutionalized since September 30, 1989. Apply the income allocation policy to Mildred.

Example. George lived in the community most of the time, but he was frequently institutionalized for short periods. He was in a continuous period of institutionalization on September 30, 1989. Apply the income allocation policy to George.

2. Became institutionalized persons (23.2.2) on or after September 30, 1989 and were eligible for MA on the date of admission. The date of admission is the effective date for these persons.

Backdating: When requested by the client, test for MA eligibility in the three months prior to the application month. Apply the MA policies in effect during the backdate period. For backdate months, do not deduct the spousal income allocation amount from the institutionalized person's income unless it was actually transferred to the community spouse in the backdate period. Calculate the income amount and the dependent family member income allocation in the same way as for current months.

23.8.0 Community Spouse Support Obligation

If it appears the community spouse is trying to avoid his/her support obligation by not signing the application, refer the case to your corporation counsel. § 49.90 Wis. Stats. requires the spouse of a dependent person to contribute to his/her maintenance.

Make a referral also when the community spouse's income is above the maximum income allocation in a spousal impoverishment case. The community spouse is obliged to report changes in his/her income and that of family members.

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23.9.0 Notices

After the institutionalized person has been determined MA eligible, the following notices are sent to both spouses:

1. Notice of Medicaid Income Allocation (HCF 10097).

This notice contains the amount of income allocated to the community spouse, and the amount of the institutionalized person's cost of care contribution.

2. Medicaid Recipient Asset Allocation Notice (HCF 10098).

This notice specifies the amount of assets the recipient must transfer to the community spouse in order to retain MA eligibility. It also specifies the date by which the transfer must be made.

23.10.0 Community Spouse's MA Application

Community spouses who apply for MA must apply on a separate application from that of the institutionalized person. Count assets and income allocated and transferred to them by the institutionalized person when you are determining the community spouse's MA eligibility. Beyond these, count only the assets and income belonging to the community spouse.